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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,708	09/07/2004	Louis T. Klauder JR.	BENDS2	3553

7590 08/29/2006
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EXAMINER

FREJD, RUSSELL WARREN

ART UNIT	PAPER NUMBER
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2128

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/506,708	Applicant(s) KLAUDER, LOUIS T.	
	Examiner Russell Frejd	Art Unit 2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03.15.06</u> . | 6) <input type="checkbox"/> Other: _____ |

In re Application of: Klauder

Examination of Application #10/506,708

1. Claims 1-17 of application 10/506,708, filed on 7-September-2004, are presented for examination. This communication is in response to the Amendment received on 15-March-2006.

Specification Objections

2. The disclosure is objected to because the content of the information in the section entitled Cross-Reference to Related Applications needs to be updated to reflect the patent number of application 10/311,613. Also, the term “banking)and “ on page 3, line 11, is understood to mean “banking) and”.

Specification Rejections under 35 U.S.C. § 112, 1st Paragraph

3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the phrase, “constructing the roll function as a linear combination of at least one of the basic roll functions while treating coefficients of an individual basic roll function as parameters of the roll function **and considering the individual basic roll function to include a coefficient when the individual basic roll function is referred to without mention of the coefficient**”. (emphasis

In re Application of: Klauder

added) The Examiner respectfully posits that the specification is silent as to including a coefficient in the individual basic roll function when the individual basic roll function is referred to without mention of the coefficient.

Claim Rejections under 35 U.S.C. § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

4.1 Claims 1-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The invention claims (claim 1 preamble), *"A machine-implemented method for constructing a roll function for use in designing transition curves for railroad tracks and other vehicle guideways, wherein the designing of the transition curves requires the roll function to be supplied."*

4.2 MPEP Section 2106(IV)(B)(2)(b)(ii) provides that a statutory computer process is determined not by how the computer performs the process, but by what the computer does to achieve a practical application with a useful, concrete and tangible result. For example, a computer process that simply calculates a mathematical algorithm that models noise is nonstatutory, while a claimed process for digitally filtering noise employing the mathematical algorithm is statutory. The long line of cases in this area that are referred to in MPEP Section 2106(IV)(B)(2)(b)(ii) exemplify this requirement, by utilizing in the claim language, terms such as controlling, executing, changing and removing. In view of the aforementioned requirement and

In re Application of: Klauder

the interim guidelines for 101 eligibility, the Examiner respectfully contends that the claim language of independent claim 1 does not claim a practical application with a tangible result, that language claiming: (in claim 1) **defining** (emphasis added) a set of basic roll functions; **constructing** the roll function as a linear combination of at least one of the basic roll functions while treating coefficients of an individual basic roll function as parameters of the roll function and **considering** the individual basic roll function to include a coefficient when the individual basic roll function is referred to without mention of the coefficient; and **defining** the roll function for shaping and superelevating said railroad tracks and other vehicle guideways.

4.3 For at least these reasons, the Examiner respectfully posits that the claims of the present invention do not meet the criteria for a statutory process. Accordingly, the claims are determined to be a method for constructing a roll function for use in designing transition curves for railroad tracks and other vehicle guideways, consisting solely of mathematical operations, converting one set of numbers into another set of numbers, whereby the method does not manipulate appropriate subject matter, and thus cannot constitute a statutory process (MPEP Section 2106(IV)(B)(2)(c)).

Allowed Claims

5. Claims 1-17 are deemed allowable over the prior art of record at this time, pending resolution of any rejections noted above.

Response Guidelines

6. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

In re Application of: Klauder

6.1 Any response to the Examiner in regard to this non-final action should be

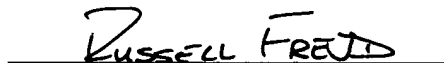
directed to: Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, **or** the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

mailed to: Commissioner of Patents and Trademarks
P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to: (571) 273-8300

Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

Date: 24-June-2006

A handwritten signature in black ink that reads "RUSSELL FREJD". The signature is written in a cursive style and is positioned above a horizontal line.

**RUSSELL FREJD
PRIMARY EXAMINER**